IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 20703 of 2003(M)

PETITIONER:

M/S. WOOD VENEERS, VALAPATTANAM,
KANNUR DISTICT, REPRESENTED BY ITS
MANAGING PARTNER, C.P. NAZREENA.

BY ADV. SRI.V.P.SUKUMAR
SRI.BEJOY CHERIYAN

RESPONDENTS:

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1. THSE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE, COMMERCIAL TAXES,
KANNUR.

2. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KANNUR.

3. THE SPECIAL DEPUTY TAHSILDAR,
REVENUE RECOVERY NO.1, KANNUR.

4. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN IA NO.7603/2003 IN WPC NO.20703/2003

DISMISSED:

22.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ORDER DT.24.7.1998 ISSUED BY THE GENERAL MANAGER, DIC, KANNUR.

P2: TRUE COPY OF ASSESSMENT ORDER DT.28.12.2001 PASSED BY R1 FOR THE PERIOD FROM 1.4.1997 TO 30.11.1997 UNDER THE KGST ACT.

P3: .DO. CST ACT.

P4: TRUE COPY OF DEMAND NOTICE IN FORM 24 ISSUED TO PETITIONER BY R1 FOR THE PERIOD FROM 1.4.97 TO 30.11.97 UNDER THE KGST ACT.

P5: .DO. UNDER THE CST ACT.

P6: TRUE COPY OF APPEAL DT.9.5.2002 FILED BY PETITIONER BEFORE THE DY. COMMISSIONER(APPEALS), KOZHIKODE FOR THE PERIOD FROM 1.4.97 TO 30.11.97 UNDER THE KGST ACT.

P7: .DO. DT.10.5.2002 .DO. CST ACT.

P8: TRUE COPY OF RR NOTICE DT.15.7.2002 ISSUED TO PETITIONER BY R3 U/S.7 OF THE RR ACT UNDER THE KGST ACT.

P9: .DO. U/S.34 .DO.

P10: .DO. U/S.7 .DO. CST ACT.

P11: .DO. U/S.34 .DO.

P12: TRUE COPY OF COMMON JUDGMENT DT.22.7.2002 IN OP NO.20410 & 20432/2002.

P13: TRUE COPY OF ORDER DT.29.11.2002 PASSED BY R2.

P14: TRUE COPY OF JUDGMENT DT.11.2.2003 IN OP NO.4804/2003(V) PASSED BY THE HON'BLE HIGH COURT OF KERALA.

P15: TRUE COPY OF ORDER DT.4.6.03 PASSED BY R4.

TRUE COPY

PA TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.20703 of 2003

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Dated this the 22nd day of November, 2007.

JUDGMENT

The petitioner is challenging Ext.P15 order under which the Commissioner of Commercial Taxes has confirmed interest levied for belated payment of tax. According to the petitioner, the levy of interest is illegal and unauthorised. He has also relied on decision of the Supreme Court in MARUTHI WIRE INDUSTRIES PVT. LTD. V. SALES TAX OFFICER (2001) 122 STC 410 and that of this court in P.K.DAMODARAN V. STATE OF KERALA (2004) 12 KTR 133 in support of his contention that interest is not payable in this case. I have heard the Government Pleader also.

2. Even though petitioner was granted sales tax exemption, the same was withdrawn by the Government vide Ext.P1 on 24.7.1998. Though the petitioner challenged the order withdrawing sales tax exemption, the same was dismissed by this court. Even after withdrawal of sales tax exemption, petitioner did not file revised return or remit the tax. According to the petitioner, the turnover in question was included in the return and therefore, interest is not payable under Section 23(3) read with Section 23(3A) of the

KGST Act. I do not think the argument of the petitioner is acceptable. In order to consider the petitioner's objection, the scope of relevant sections are to be gone into and for easy reference the relevant sub-clauses of Section 23 are extracted hereunder:

> "S.23(3) If the tax or any other amount assessed or due under the Act is not paid by any dealer or other person within the time prescribed therefor, in this Act or in any rule made thereunder and in other cases within the time specified therefor in the notice of demand, the dealer or other person shall pay, by way of interest, in the manner prescribed, in addition to the amount due, a sum equal to:-
>
> (a) one per cent of such amount for each month or part thereof for the first three months after the date specified for its payment;
>
> (b) two per cent of such amount for each month or part thereof subsequent to the first three months aforesaid.
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> S.23(3A) Where any dealer has failed to include any turnover of his business in any return filed or where any turnover has escaped assessment, interest under sub-section(3) shall accrue on the tax due on such turnover with effect from such date on which the tax would have fallen due for payment had the dealer included the same in the return relating to the period to which such turnover relates."

While Section 23(3) provides for interest for belated payment of tax due under the Act whether assessed or demanded tax, sub-section (3A) of Section 23 provides that where any dealer fails to include turnover of his business in his return filed or when any turnover escape assessment, interest

under sub-section (3) shall accrue on the tax on such turnover with effect from such date on which tax would have fallen due for payment had the dealer included the same in the return relating to the period to which such turnover relates. Sub-section (3A) therefore applies not only to a case where dealer fails to include turnover in his return, but all cases of non-payment of tax on the taxable turnover. In this particular case it is neither a case of failure to include turnover in the return nor escapement of turnover, but wrong classification of turnover in the return. In the original return filed by the petitioner, turnover was declared as exempted turnover. When sales tax exemption was withdrawn, the return should have been revised by transferring turnover on which exemption was claimed to taxable turnover and petitioner should have paid the tax thereon. Failure to do so is also a situation covered by sub-section (3A) of Section 23 because on account of misclassification, escapement of self-assessment and payment of tax on taxable turnover happens which attracts interest under the said Section. The decision of the Supreme Court referred to above does not apply to this case because the decision was rendered prior to introduction of sub-section (3A) to Section 23 and before amendment to sub-clause (3) of Section 23. So far as the Division Bench judgment of this court is concerned, it is seen that facts are different in as much as the issue there was a bonafide dispute

on rate of tax claimed by the assessee which got sorted out in assessment. In fact this court found that the turnover was declared in the return at 3% and tax was also paid by the assessee, though the final assessment was completed at 4%. In the circumstances, both the above decisions do not apply to the petitioner's case and since petitioner's is a case squarely falling under sub-section (3A) of Section 23 as held above, the impugned orders are to be necessarily upheld and I do so. The W.P. is devoid of any merit and is dismissed. However, the interest paid during pendency of W.P. should be adjusted and only balance should be recovered from the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

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